

A **PETROLIAM NASIONAL BHD (PETRONAS) v.
KERAJAAN NEGERI SARAWAK**

FEDERAL COURT, PUTRAJAYA
AHMAD MAAROP CJ (MALAYA)
[APPLICATION NO: BKA-7-06-2018(W)]

B 22 JUNE 2018

C **CONSTITUTIONAL LAW:** *Courts – Federal Court – Jurisdiction – Application for leave to commence proceedings pursuant to art. 4(4) of Federal Constitution – Petition for declaratory reliefs – Whether declaratory reliefs sought came within ambit of arts. 4(3) and 4(4) of Federal Constitution – Whether within exclusive original jurisdiction of Federal Court – Federal Constitution, art. 128(1)(a)*

D The applicant, *via* encl. 1, prayed that it be given leave to commence proceedings against Kerajaan Negeri Sarawak ('the respondent'), pursuant to art. 4(4) of the Federal Constitution ('FC') in the Federal Court in the exercise of its original jurisdiction under arts. 4(3) and 128(1)(a) of the FC, by way of a petition for declaratory reliefs to the following effect (i) a declaration that by virtue of art. 74(1) read with item 8(j) List I Ninth Schedule of the FC, Parliament has exclusive legislative competence to enact laws pertaining to the exploration, exploitation, winning and obtaining of petroleum throughout Malaysia, be it onshore or offshore ('upstream activity'); (ii) a declaration that the Petroleum Development Act 1974 ('the PDA') was duly enacted by Parliament; and (iii) a declaration that the Sarawak Oil Mining Ordinance 1958 was impliedly repealed by the PDA.

F **Held (dismissing encl. 1)**
Per Ahmad Maarop CJ (Malaya) delivering the judgment of the court:

- G (1) Articles 4(3), 4(4) and 128(1)(a) of the FC apply only where the validity of a law is challenged on the ground that it 'makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws.' (para 3)
- H (2) The declaratory reliefs sought by the applicant did not come within the ambit of arts. 4(3) and 4(4) of the FC. Hence, the declaratory reliefs sought by the applicant were not within the exclusive original jurisdiction of the Federal Court. The declaratory reliefs sought were within the original jurisdiction of the High Court. Thus, the question of leave under art. 4(4) of the FC did not arise. (para 9)

Bahasa Malaysia Headnotes

I Pemohon, melalui lampiran 1, memohon diberi kebenaran memulakan prosiding terhadap Kerajaan Negeri Sarawak ('responden'), bawah per. 4(4) Perlembagaan Persekutuan ('PP') di Mahkamah Persekutuan dalam pelaksanaan bidang kuasa asalnya bawah per. 4(3) dan 128(1)(a) PP melalui petisyen untuk relief-relief perisytiharan berikut (i) satu perisytiharan

bahawa bawah per. 74(1) dibaca bersama-sama dengan item 8(j) Senarai 1 Jadual Kesembilan PP, Parlimen mempunyai kekompetenan legislatif eksklusif untuk menggubal undang-undang berkaitan dengan penjelajahan, eksploitasi, kemenangan dan pemerolehan petroleum di seluruh Malaysia, sama ada di pantai atau luar pesisir ('aktiviti hulu'); (ii) satu perisytiharan Akta Pembangunan Petroleum 1974 ('APP') digubal oleh Parlimen; dan (iii) satu perisytiharan Ordinan Perlombongan Minyak Sarawak 1958 secara tidak langsung dibatalkan oleh APP.

Diputuskan (menolak lampiran 1)

Oleh Ahmad Maarop HB (Malaya) menyampaikan penghakiman mahkamah:

- (1) Perkara-perkara 4(3), 4(4) dan 128(1)(a) PP hanya terpakai apabila kesahihan satu undang-undang dicabar atas alasan 'membuat peruntukan berkaitan perkara yang Parlimen atau, mengikut keadaan, Badan Perundangan Negeri tidak mempunyai kuasa untuk membuat undang-undang'.
- (2) Relief-relief perisytiharan yang dituntut pemohon tidak termasuk dalam rangkuman per. 4(3) dan 4(4) PP. Oleh itu, relief-relief perisytiharan yang dituntut pemohon tidak termasuk dalam bidang kuasa asal eksklusif Mahkamah Persekutuan. Perisytiharan-perisytiharan yang dituntut adalah dalam bidang kuasa asal Mahkamah Tinggi. Oleh itu, persoalan kebenaran bawah per. 4(4) PP tidak timbul.

Case(s) referred to:

Ah Thian v. Government of Malaysia [1976] 1 LNS 3 FC (*refd*)
Gin Poh Holdings Sdn Bhd v. The Government of the State of Penang & Ors [2018] 4 CLJ 1 FC (*refd*)

Legislation referred to:

Federal Constitution, arts. 4(3), (4), 74(1), 128(1)(a), Ninth Schedule List I item 8(j)

Petroleum Development Act 1974, ss. 7, 7A
 Petroleum Regulations 1974, regs. 3, 5

For the applicant - Malik Imtiaz Sarwar, Surendra Ananth & Khoo Suk Chyi; M/s Malik Imtiaz Sarwar

For the respondent - Talat Mahmood Abdul Rashid; SAG Sarawak, JC Fong; SLC, Saferi Ali; DSAG & Mohd Adzrul Adzlan; SLO

Watching brief - Zaleha Rose Pandin, SAG, Sabah

Fazidah Hatun Pg Bagul, SC, Sabah

Rafidah Maqbool Rahman, SC, Sabah

Shamsul Bolhassan, Senior Assistant Registrar

Reported by Suhainah Wahiduddin

A JUDGMENT

Ahmad Maarop CJ (Malaya):

Decision

[1] Article 4 of the Federal Constitution provides:

- B 4. Supreme law of the Federation.
- (1) ...
- (2) ...
- C (3) The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for **a declaration that the law is invalid on** that ground or:
- D (a) if the law was made by Parliament, in proceedings between the Federation and one or more States;
- (b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.
- E (4) Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a judge of the Federal Court; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to proceedings brought for the
- F same purpose under paragraph (a) or (b) of the Clause. (emphasis added)

[2] Article 128 of the Federal Constitution provides:

128. Jurisdiction of Federal Court.

- G (1) The Federal Court shall, to the exclusion of any other court, have jurisdiction to determine in accordance with any rules of court regulating the exercise of such jurisdiction:
- (a) any question whether a law made by Parliament or by the Legislature of a State *is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws*; and
- H (b) disputes on any other question between States or between the Federation and any State. (emphasis added)

I [3] Articles 4(3), 4(4) and 128(1)(a) apply only where the validity of a law is challenged on the ground that it “makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws”. (See *Gin Poh Holdings Sdn Bhd v. The Government of the State of Penang & Ors* [2018] 4 CLJ 1).

[4] Clause (3) of art. 4 provides that the validity of any law made by Parliament or by a State Legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant Legislature has no power to make law, except in three types of proceedings as follows: A

- (a) in proceedings for a declaration that the law is invalid on that ground; or B
- (b) if the law was made by Parliament, in proceedings between the Federation and one or more States; or
- (c) if the law was made by a State Legislature, in proceedings between the Federation and that State. C

It will be noted that proceedings of types (b) and (c) are brought by Government, and there is no need for any one to ask specifically for a declaration that the law is invalid on the ground that it relates to a matter with respect to which the relevant Legislature has no power to make law. The point can be raised in the course of submission in the ordinary way. Proceedings of type (a) may however be brought by an individual against another individual or against Government or by Government against an individual, but whoever brings the proceedings must specifically ask for a declaration that the law impugned is invalid on that ground. D

[5] Clause (4) of art. 4 provides that proceedings of the type mentioned in (a) above may not be commenced by an individual without leave of a judge of the Federal Court and the Federation is entitled to be a party to such proceedings, and so is any State that would or might be a party to proceedings brought for the same purpose under type (b) or (c) above. This is to ensure that no adverse ruling is made without giving the relevant Government an opportunity to argue to the contrary. E

[6] Clause (1) of art. 128 provides that only the Federal Court has jurisdiction to determine whether a law made by Parliament or by a State Legislature is invalid on the ground that it relates to a matter with respect to which the relevant Legislature has no power to make law. This jurisdiction is exclusive to the Federal Court, no other court has it. This is to ensure that a law may be declared invalid on this very serious ground only after full consideration by the highest court in the land. (See *Gin Poh (supra)*; *Ah Thian v. Government of Malaysia* [1976] 1 LNS 3; [1976] 2 MLJ 112]. F

[7] In encl. 1, the applicant prayed that it be given leave to commence proceedings against the respondent pursuant to art. 4(4) of the Federal Constitution in the Federal Court in the exercise of its original jurisdiction under arts. 4(3) and 128(1)(a) of the Federal Constitution by way of a petition for declaratory relief to the following effect: G

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- A (i) A declaration that by virtue of art. 74(1) read with item 8(j), List I, Ninth Schedule, Federal Constitution, Parliament has exclusive Legislative competence to enact laws pertaining to the exploration, exploitation, winning and obtaining of petroleum throughout Malaysia, be it onshore or offshore (“upstream activity”);
- B (ii) Consequentially:
- C (a) a declaration that the Petroleum Development Act 1974 (“PDA”) was duly enacted by Parliament and that by virtue of s. 7 of the PDA, and regs. 3 and 5 of the Petroleum Regulations 1974, and the order made under s. 7A of the PDA dated 28 November 1980, the Chairman and Chief Executive of the applicant have exclusive regulatory authority over upstream activity;
- (b) a declaration that the Sarawak Oil Mining Ordinance 1958 was impliedly repealed by the PDA;
- D (iii) The applicant is to commence said proceedings within 14 days from the date of the order herein;
- (iv) Costs of and incidental to this application be costs in the cause; and
- (v) Further and/or other orders this honourable court deems fit and just.
- E [8] It is clear that in the encl. 1, the applicant does not specifically ask for declaration that certain law is invalid on the ground that the Legislature which made that law had no Legislative power to make the law. In prayer
- F (i), the applicant sought a declaration that Parliament has exclusive Legislative competence to enact laws pertaining to the exploration, exploitation, winning and obtaining of petroleum throughout Malaysia, be it onshore or offshore, and that in prayer (ii)(a), declaration that the PDA was duly enacted. Indeed, the respondent did not dispute the entitlement of Parliament to enact the PDA. In prayer (ii)(b), the applicant does not seek
- G a declaration that the Sarawak Oil Mining Ordinance 1958 was invalid on the ground that the Legislature had no competency to legislate that law. What was prayed for was a declaration that the Ordinance was impliedly repealed by the PDA.
- [9] In my view, the declaratory reliefs sought by the applicant do not come within the ambit of arts. 4(3) and 4(4) of the Federal Constitution.
- H Hence, the declaratory reliefs sought by the applicant are not within the exclusive original jurisdiction of the Federal Court. The declaratory reliefs sought are within the original jurisdiction of the High Court. Thus, the question of leave under art. 4(4) of the Federal Constitution does not arise.
- I [10] In the result, the application in encl. 1 is dismissed.
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